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COMMISSION ON HUMAN RIGHTS

SUB-COMMISSION ON THE PROMOTION AND PROTECTION
OF HUMAN RIGHTS

Fifty-first session

SUMMARY RECORD OF THE 17th MEETING

Held at the Palais des Nations, Geneva,
on Monday, 16 August 1999, at 3 p.m.

Chairman: Mr. HATANO

CONTENTS

CONTEMPORARY FORMS OF SLAVERY (continued)

HUMAN RIGHTS OF INDIGENOUS PEOPLES

(a) INDIGENOUS PEOPLES AND THEIR RELATIONSHIP TO LAND

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GE.99-14596 (E)

The meeting was called to order at 3 p.m.

CONTEMPORARY FORMS OF SLAVERY (agenda item 6) (continued)
(E/CN.4/Sub.2/1999/15, 16 and 17; E/CN.4/Sub.2/1999/NGO/7 and 15; update of the final report of the Special Rapporteur on systematic rape, sexual slavery and slavery-like practices during armed conflict, document without a symbol in English only)

1. Mr. YOSHIDA (Asian Women's Human Rights Council) said that despite the recommendations by the Special Rapporteur on violence against women, Ms. Coomaraswamy, in her 1998 report to the Commission on Human Rights (E/CN.4/1998/54/Add.1), the Japanese authorities had not given the question of the "comfort women" its due place in school textbooks. The Ministry of Education carefully screened the context of textbooks and ensured that they did not go into details about the inter-war period.

2. Furthermore, the "Association for the Authentic History Textbook", with its approximately 9,200 revisionists, was intending to publish its own textbook of Japanese history, which would contain no reference to the "comfort women". According to the revisionists, these women had merely been prostitutes who currently wanted only money.

3. Ms. YASUHARA (Asian Women's Human Rights Council), following on from the previous speaker, said that following the capitulation of Japan in 1945, a large number of prisoners of war, approximately 600,000 Japanese and 13,000 Koreans, mainly rank-and-file soldiers, had been taken by the Soviet Union to Siberia and Mongolia and enrolled as forced labour. Documents discovered in the Soviet archives seemed to indicate that the soldiers had been sold by their leaders as part of war reparation and that there were civilians among them, including women. Approximately 10 per cent were said to have perished from the working conditions and the cold. The Government of Japan refused to pay the unpaid wages of the prisoners repatriated from Siberia although it had paid up in full the wages of prisoners of war under the control of the allied forces.

4. Ms. McDOUGALL (Special Rapporteur on systematic rape, sexual slavery and slavery-like practices during armed conflict) recalled that in the final report she had presented to the Sub-Commission in 1998 (E/CN.4/Sub.2/1998/13), she had concluded that systematic rape, sexual slavery and slavery-like practices during armed conflict constituted violations of human rights, humanitarian and international criminal law and as such must be properly investigated, the perpetrators brought to justice and the victims given criminal and civil redress, including compensation where appropriate. The report also concluded that even in the absence of armed conflict there were circumstances in which sexual violence, including rape, could be prosecuted on the same grounds as slavery, crimes against humanity, genocide or torture.

5. It was clearly important to continue to focus on the use of sexual violence as a weapon of war, as evidenced by atrocities committed almost everywhere in the world, including Afghanistan, Algeria, Burma, Burundi, Colombia, the Democratic Republic of the Congo, Indonesia, Kosovo, Liberia,

Sierra Leone, Sri Lanka, Uganda and elsewhere. While the report placed special emphasis on sexual violence against women, the same violence against men and boys was equally serious.

6. Since the Preparatory Commission on the Establishment of an International Criminal Court was meeting at that moment in New York to consider the question of the elements of crimes on which the Court would have to rule, she hoped that account would be taken of the principles and recommendations contained in her final report and its update. The two documents were in the first place a call for an effective response to sexual violence during war. They emphasized that rape and other forms of sexual abuse were crimes of violence which, under certain circumstances, could be described as slavery, crimes against humanity, genocide, grave breaches of the Geneva Conventions, war crimes or torture. Their intention was also to reinforce the legal framework for the prosecution of those crimes with a view to an application of international law which would take the special situation of women more into account.

7. During the conflict in Sierra Leone, rape and sexual slavery were commonplace, as she had realized during a mission to the country on interviewing teenage girls who had been subjected to such practices. In Kosovo, Serb soldiers had also been guilty of numerous acts of sexual violence, including rape, against ethnic Albanian women and girls. In Uganda, it was estimated that the rebels of the Lord's Resistance Army, supported by Sudan, had abducted some 10,000 children, with girls as young as 12 given to rebel commanders as "wives". That practice in fact constituted sexual slavery since the victims did not have the freedom to leave or to refuse the sham "marriage".

8. The most effective deterrent to the use of sexual violence during armed conflicts was to hold the perpetrators responsible for their crimes. The adoption of the Statute of the International Criminal Court in Rome on 17 July 1998 was to be welcomed in that regard. The Statute of the Court explicitly classified rape and all other forms of sexual violence of comparable gravity as crimes against humanity. The Court would, however have jurisdiction only over crimes committed after its establishment. Crimes committed before that date would have to be judged by national judicial systems. It should also be pointed out that the case-law of the International Criminal Tribunal for Rwanda and the International Criminal Tribunal for the Former Yugoslavia confirmed that sexual slavery and other forms of sexual violence committed during armed conflict were international crimes, whether committed against men or women. At least half of the indictments of the International Criminal Tribunal for the Former Yugoslavia had been for sexual violence. In the Celebici judgement the Tribunal had cited an idea contained in the Special Rapporteur's final report to the effect that in many cases the discrimination prong of the definition of torture in the Convention against Torture provided an additional basis for prosecuting rape and sexual violence as torture. The International Criminal Tribunal for Rwanda had also made important contributions towards ending impunity for sexual violence committed during armed conflict. For example, Jean-Paul Akayesu had been found guilty

not only of genocide and incitement to commit genocide but also of having been present during acts of sexual violence by his subordinates while failing to stop them.

9. The update of the report also discussed the critical issue of the right of victims to repa· ation for gross violations of international law, including rape and other forms of sexual violence committed during armed conflict. It was to be hoped that the revised guidelines concerning the right of victims to reparation which were to be elaborated would take the particular situation of women into consideration. In the case of the 200,000 women and girls enslaved in so-called "comfort stations" by the Japanese Imperial Army during the Second World War, the Government of Japan had not admitted its legal liability and had failed to pay legal compensation to the victims. Some survivors had filed lawsuits in the Japanese courts to obtain reparation. Three of them had been awarded damages, but the claims of 46 others had been denied and several other cases were still pending.

10. In order to combat atrocities still occurring, States must adopt appropriate legislation to allow for the prosecution of international crimes within domestic legal systems, and ensure that their legal systems at all levels conformed to internationally accepted norms and were capable of adjudicating international crimes without gender bias. Provision must also be made for appropriate resources, mechanisms and personnel for the protection of victims and witnesses during and after prosecution of crimes involving sexual violence during armed conflict; an ongoing dialogue must be facilitated between the Preparatory Commission for the Establishment of an International Criminal Court and the relevant bodies of the United Nations in order to increase the efficiency of the International Criminal Court; proper investigation must be carried out into sexual violence during conflict situations with a view to eventual prosecution; and effective action must be taken at the conclusion of hostilities to break the cycle of impunity for the perpetrators of sexual violence committed during armed conflict. Such efforts must include the close collaboration of women in the peace-building process.

11. The report also stressed the need to consider the question of sexual violence and the discrimination against women and girls in their everyday lives everywhere in the world. Women belonging to racial, ethnic, religious or other minorities were particularly vulnerable. Often the shame, ostracism and dishonour that should be imputed to the perpetrator of sexual violence attached instead to the survivor if she dared to report the violence endured. Such women must absolutely be helped to overcome their fears and their pain and to demand that justice should be done.

12. Since the International Criminal Court, the International Criminal Tribunal for Rwanda and the International Criminal Tribunal for the Former Yugoslavia would be able to address only a small fraction of the violations that were being committed in armed conflicts, it was imperative that all the perpetrators of sexual violence should be prosecuted at the national level. Only then could it be hoped that sexual violence would no longer be used as a weapon of war.

13. Mr. QUISSÉ thanked Ms. McDougall for her very full report on sexual violence committed during armed conflict. Referring to the International

Criminal Court, the Special Rapporteur had said that it would only have jurisdiction over crimes committed after it had been established. He considered that that was a breach of the principle of the non-applicability of statutory limitations for serious crimes such as large-scale massacres. The perpetrators of numerous international crimes were indeed liable to go unpunished if national justice did not judge them.

14. Mr. DOTTRIDGE (International Movement Against All Forms of Discrimination and Racism and Anti-Slavery International) said that the two non-governmental organizations which he represented and another two NGOs had organized a Consultation on trafficking in persons, prostitution and the global sex industry in June 1999, immediately before the twenty-fourth session of the Working Group on Contemporary Forms of Slavery. At the end of its session the Working Group had incorporated into its recommendations a number of the suggestions put forward by the NGOs during the Consultation. The NGOs had been pleased to note that the Working Group had encouraged States to ensure that victims of sex trafficking were not the subject of criminal proceedings or other legal and administrative sanctions and had also recommended that the United Nations General Assembly should declare a United Nations Year against Trafficking in Persons to assist the development of plans of action at both the national and international level. The international community needed first and foremost to be clear about the abuses it intended to end and the measures to be put into force in order to do so.

15. The elaboration of a draft additional protocol to the United Nations Convention against Transnational Organized Crime to prevent, suppress and punish trafficking in persons, especially women and children was also welcomed. The term "traffic" should not refer exclusively to prostitution but also to other forms of forced labour, particularly when women and children were involved.

16. It seemed that there was no United Nations body to provide technical expertise on the suppression of traffic in persons. States which had ratified the three United Nations conventions on slavery which were the basis of the Working Group's mandate were not required to report either to that Working Group or to any other United Nations body about their efforts to implement the conventions. That situation needed to be remedied.

17. Ms. SHAUMIAN (International Institute for Peace) took as her theme the exploitation of children. In her opinion the most dangerous and most destructive form of slavery.

18. Never before in history had so many children been the victims of cruelty and violence; special attention should therefore be given to the needs of children in the labour market. The adoption of the new ILO Convention on Extreme Forms of Child Labour was to be welcomed. The number of working children worldwide according to ILO estimates was a staggering 250 million, of whom at least 120 million between the ages of 5 and 14 were working full time, particularly in Asia and South-East Asia, with terrible consequences for their mental and physical development.

19. Child labour also existed in many industrialized countries where it affected disadvantaged families and social groups. It was mainly poverty that drove parents in developed and developing countries to send their children to work. Sometimes families had to pledge their children's labour in return for a loan to buy food or medicine. That practice constituted debt bondage and was officially considered as slavery.

20. Many rural families in poor countries sent their children to town for domestic work. Those children, the majority of them girls, were estimated at 200,000 in Haiti, with 40,000 in Port-au-Prince alone. They were not always paid and might work up to 18 hours a day, with no access to education, and they were frequently subjected to sexual abuse.

21. Her Institute supported the International Programme on the Elimination of Child Labour which focused on the need for the total prohibition of bonded child labour, commercial sexual exploitation and traffic in children, child labour in domestic service and child labour in hazardous work. It also welcomed the establishment in 1991 of the United Nations Voluntary Trust Fund on Contemporary Forms of Slavery. The total amount of the contributions to date meant that every one of the 250 million child workers in the world would be able to receive assistance.

22. Ms. CHUNG (Asia-Pacific Forum on Women, Law and Development) thanked Ms. McDougall for her pioneering and soul-searching work on systematic rape, sexual slavery and slavery-like practices during armed conflict, which would be a continuing source of hope for the countless number of victims of sexual violence during armed conflict in the past and present. The impunity of the perpetrators of sexual slavery, particularly as practised by Japan during the Second World War, was a major reason for the prevalence of that practice and other forms of sexual violence in present armed conflict situations.

23. As the Special Rapporteur had pointed out, the victims of Japanese atrocities had received neither reparation nor compensation nor had the Government of Japan officially acknowledged liability, either in the case of the victims of sexual violence or in that of former prisoners of war, Koreans in particular, subjected to forced labour in slavery-like conditions. The legacy of Japanese military slavery was thus liable to pass to the next century without justice being done, hindering the work of reconciliation and peace. The problem would not be settled until Governments in general and in particular the Governments of countries where the victims lived, placed the issue over and above their supposed national interests. Rhetoric was rife but no effective action had been taken and the human rights protection mechanisms of the United Nations had clearly demonstrated their limitations. Efforts had been made in civil society, in particular an initiative to set up a civilian war crimes tribunal on Japanese military sexual slavery. The international community was invited to contribute to the success of the effort.

24. In view of the fact that the practice of systematic rape and sexual slavery continued in current armed conflicts as in the past and that there were no adequate mechanisms to combat sexual violence, the Forum suggested that the mandate of the Special Rapporteur on systematic rape, sexual slavery and slavery-like practices should be extended in order for the Sub-Commission to develop new international standards or guidelines for the elimination of

those practices to ensure the protection of victims and permit the prosecution of perpetrators, and institute model legislation to harmonize national legislation with new international schemes for protection. The Office of the High Commissioner for Human Rights could help to break the circle of impunity, especially by documenting sexual violence during armed conflict in cooperation not only with governmental institutions but particularly with NGOs, as recommended by Ms. McDougall in her update report. With respect to the issue of Japanese military sexual slavery during the Second World War, it was essential for the Sub-Commission to continue its work until the Government of Japan met the demands of the international community, for example, at the very least, by providing a yearly update on the situation.

25. Ms. PARKER (International Educational Development) drew attention to two contemporary forms of slavery: low-paid or unpaid prison labour and sweatshops. Inadequately paid prison labour was a prevalent form of slavery even in the developed world. For example, in the United States, wages paid to prisoners were far below the legal minimum wage. In Japan, major motor-vehicle construction companies regularly used unpaid prison labour. The Working Group on Contemporary Forms of Slavery should address prison labour as an issue of high priority.

26. Sweatshops were another increasingly common contemporary form of slavery. In Saipan, in the Marianas Islands, workers (mostly women) were recruited from impoverished Asian countries by major American companies to work in garment factories for grossly inadequate wages often 12 hours a day seven days a week in insalubrious and almost inhumane conditions. A lawsuit had been filed against several of those companies. It was to be noted that the United States had acceded neither to the International Covenant on Economic, Social and Cultural Rights nor to ILO Conventions Nos. 87 and 100, setting out workers' rights applicable to sweatshops on its territory. The Sub-Commission should encourage the Working Group to continue to address the question of sweatshops and their proliferation, perhaps in a joint initiative with ILO.

27. Her organization was extremely pleased that the contributions to the United Nations Voluntary Fund on Contemporary Forms of Slavery had increased. It thanked all donors and invited Governments which had not yet contributed to the Fund to do so.

28. Ms. PATTY (Interfaith International) shared Mr. Guissé's concerns about the continued existence of slavery-like practices in Mauritania and Sudan. The practice of slavery had re-emerged in Sudan as an effect of the current civil war and its prime victims were young women and children from the Dinka and Nuba peoples living in Southern Sudan and the Nuba Mountains. The crimes in question were mainly committed by the nomad militias armed and financed by the Government. In Mauritania, the practice of slavery still continued and affected nine tenths of the population of African origin. The State of Mauritania had not implemented the laws abolishing slavery and had never provided reparation for the damage to which the victims had been subjected.

29. Her organization regretted the Sub-Commission's decision to cease passing resolutions on countries whose human rights situation was already

being covered by the public procedure of the Commission on Human Rights. The latter could not, because of political interests, address certain issues, unlike the Sub-Commission which was an independent body. Her organization therefore urged the Sub-Commission to reconsider its decision so as fully to assume its responsibilities toward the promotion and protection of human rights anywhere in the world.

30. The use of women and girls as booty in armed conflicts almost everywhere in the world was a war crime which would go unpunished unless effective measures were taken. Six years after the issue of the Korean "comfort women" had been brought to the attention of the United Nations, her organization hoped that Japan would provide information on what follow-up it had given to the matter, open its records to the public and finalize the issue.

31. Mr. HASSAN (Observer for Pakistan) congratulated the Working Group on Contemporary Forms of Slavery for its excellent work. The Working Group provided a forum for useful discussion not only between experts and Governments but also between Governments and NGOs on the very important question of contemporary forms of slavery and was an indispensable tool of the Sub-Commission. His delegation was therefore not favourable to certain proposals to replace the Working Group by a special rapporteur. At the last session of the Working Group the question had arisen as to whether it should or not be engaged in monitoring forced labour situations. His delegation believed that it should focus on its original task of considering issues relevant to the prevention of slavery since the follow-up role had already fallen to other bodies such as the Human Rights Committee and the Committee on the Rights of the Child, while supervisory machinery already existed to monitor the implementation of the ILO Conventions on forced labour, and in particular Conventions Nos. 29 and 105.

32. Mr. TALIB (Observer for Sudan) recalled that Sudan was party to the conventions prohibiting slavery, while article 20 of its Constitution clearly stipulated that no human being should be subjected to slavery or forced labour. It was all the more regrettable that some irresponsible groups were circulating claims that certain acts of abduction of women and children, resulting from tribal conflicts in some areas of Sudan and exacerbated by armed conflict in Southern Sudan, amounted to slavery. In 1996 the Government of Sudan had established a commission to investigate the situation, which had concluded that the allegations of slavery were totally unfounded. Furthermore, pursuant to a request by the Commission on Human Rights in its resolution 1999/15, the Government established in June 1999 the Committee for the Eradication of Abduction of Women and Children, which comprised in its membership representatives of intergovernmental organizations, civil society and NGOs collaborating directly with UNICEF, UNHCR and Operation Lifeline Sudan. As from July, the Committee, in cooperation with the Dinka Tribal Committee, had released more than 20 abducted women and children who were reunited with their families. In cooperation with UNICEF, it had organized in Khartoum a three-day workshop on the eradication of the abduction of women and children, with the participation of many local and foreign NGOs, representatives of the leaders of the nomadic tribes concerned and interested foreign diplomats. Work plans were adopted for the liberation of all abducted

women and children and plans to undertake a similar process in areas controlled by rebels in Southern Sudan were being drawn up as part of a joint effort between UNICEF and Operation Lifeline Sudan.

35. The Government of Sudan welcomed the cooperation of the international community in its efforts to put an end to the practice of the abduction of women and children. It considered nevertheless that it could contribute even more by addressing the root causes of the phenomenon, which were to be found in the armed conflict in Southern Sudan. It called on the international community to urge the rebel movement to accept the general unilateral ceasefire declared recently by the Government and to come to the negotiating table in order to arrive at a just and final solution to the conflict.

36. Mr. PAK Tok Hun (Observer for the Democratic People's Republic of Korea) drew the Sub-Commission's attention to the crimes against humanity committed by Japan which, throughout its 40-year long occupation of Korea, had forcibly drafted more than 6 million Koreans into its army and forced 200,000 Korean women to serve as sex slaves for Japanese soldiers. Japan was legally and morally required to acknowledge and compensate for those crimes. In her final report on systematic rape, sexual slavery and slavery-like practices during armed conflict (E/CN.4/Sub.2/1998/13), Ms. McDougall had concluded that Japan was responsible for grave violations of human rights and humanitarian law which amounted in their totality to crimes against humanity. She had recommended that Japan should seek out and prosecute all those responsible and set up a swift and adequate compensation scheme to provide official compensation to the "comfort women". Far from apologizing for the wrongs caused to the Korean people, however, the Japanese authorities revised history and commended the criminals.

37. His delegation demanded that the Japanese Government should reflect upon its crimes against humanity and urged it first of all to acknowledge its responsibility for the inhumane crimes against the Korean people, secondly, to compensate the victims of those crimes, and, thirdly, to seek out and prosecute all the perpetrators of those crimes. Japan must clearly show the international community that on the threshold of the new century it was willing to face up to its past.

38. Mr. HUSSIN (International Peace Bureau) said that his organization was deeply concerned about the question of violence against women in armed conflict and the use of rape as a weapon of war. Violence of that type, used as a weapon to break the will of a whole people, was being employed by the Sri Lankan army against the Tamil population, and against women in particular, as the Commission's Special Rapporteur on extrajudicial, summary or arbitrary execution and the Special Rapporteur on violence against women had outlined in their respective reports.

39. The Tamil community had been further shocked by the discovery of mass graves in Chemmani. Appeals had been made, particularly by a women's association, for independent foreign forensic experts to be involved in the exhumations. However, the Foreign Ministry had said that while foreign experts could be present they would not be permitted to participate directly

in the investigation process. The situation was causing great concern, as was the fact that the armed forces of Sri Lanka were continuing to rape and murder Tamil women.

39. His organization appealed to the Sub-Commission strongly to condemn human rights violations in Sri Lanka, to demand independent inquiries on the question of the mass graves and to appoint a special rapporteur on the situation in Sri Lanka.

40. Mr. FAN Guoxiang congratulated Ms. Ksentini on the quality of the report of the Working Group on Contemporary Forms of Slavery (E/CN.4/Sub.2/1999/17) and Ms. McDougall for her updated report on systematic rape, sexual slavery and slavery-like practices during armed conflict (not yet published). Referring to chapter VI of the latter report, he noted that the question of the "comfort women" who had been the victims of the system of military sexual slavery set up by the Japanese Army during the Second World War had still not been settled. The Japanese Government had indeed offered apologies but that was not completely satisfactory in that the victims had received no official compensation from the authorities. The question of Japan's legal liability, which it had still not acknowledged, also arose. There was no question of invoking the liability of the Japanese Government as a whole, but only that of the imperialist military Government in power at the time.

41. Ancestor worship, which was part of traditional Japanese culture, did not in itself merit criticism, but it should not be forgotten that war criminals figured among those ancestors. To criticize Japanese imperialism was not to criticize the Japanese overall since there had been Japanese among its victims, nor could the new generation be held responsible for the acts of its forebears. The Japanese Government must nevertheless learn from history and, instead of evading its responsibilities, give satisfaction to the women who had been the victims of those practices and who were asking for compensation.

42. Mr. DIAKITE congratulated the Working Group on Contemporary Forms of Slavery on the quality of its report. It was sad that the issue of slavery was still current at the turn of a new century, the twenty-first, and alarming to witness the proliferation of such practices, their existence in nearly every country and their burgeoning development as a result of the new information technologies, particularly Internet. Globalization meant that some of them had become a regular occurrence. The lowest form of exploitation was sexual slavery, the subject of Ms. McDougall's updated report, which rightly stressed the need to put an end to the impunity of the perpetrators of sexual violations against women.

43. In view of the many problems relating to the practices of slavery awaiting consideration, he was glad that the Working Group had decided to set itself priority areas for action such as the traffic in persons. At its last session, the Working Group had made a number of useful recommendations, inter alia, concerning the development of national plans to tackle the problem, the importance of information campaigns in the countries of origin of the victims and the establishment of machinery to protect witnesses and victims and social reintegration programmes for the latter. Governments must also be urged to collaborate more with the Working Group and organization

needed to be strengthened on the one hand between the various competent international agencies and on the other between the national and international protagonists. The idea of setting up machinery to coordinate issues of the traffic in persons was a useful one and should be considered in greater depth in consultation with the Office of the High Commissioner for Human Rights. Lastly, he considered that the Working Group could also play an important role in standard-setting, particularly by assisting the international bodies dealing with the question.

43. Mr. JOINET said that the report of the Working Group on Contemporary Forms of Slavery was right to stress the growth of the phenomenon of the traffic in persons and the exploitation of prostitution by others. He considered it to be an effect of the cold war, partly to be explained by the destitution to be found in the Russian Federation, for example, where the traffic was organized in the direction of countries like France.

44. In view of the fact that the implementation and the follow-up of the conventions on slavery was rarely mentioned, it was essential that the Working Group, the dissolution of which had been envisaged by the Bureau at the fifty-fourth session of the Commission, should continue to exist. In fact, it was the only body in which anti-slavery non-governmental organizations could engage freely in dialogue with Governments.

45. Referring to agenda item 5, he said that a large section of the report on the development of the situation regarding the elimination of traditional practices affecting the health of women and the girl child (E/CN.4/Sub.2/1999/14) consisted of a historical review. The subject of excision had in the past been taboo in the international organizations since it was regarded as an essentially cultural matter. He recalled the difficulties to which the appointment of a special rapporteur had given rise at the time and the courage Ms. Warzazi, as an African, had shown in accepting the mandate. Fifteen years previously, it had been unthinkable for the African countries to take a stand on such issues. In his opinion, when a problem comprised a cultural dimension only time would permit of its solution. On that count the report should be annual, otherwise States would not rally to the implementation of their national plans.

46. Mr. EIDE (UNEP) considered that the update of Ms. McDougall's report was useful since it gave an idea of the development of the situation over the past year. Unfortunately, the hopes which had emerged then of applying new rules of behaviour in armed conflict had not materialized on the ground and sexual violence was still widely used as a weapon of war. As the report of the Secretary-General on the situation of women and girls in Afghanistan showed (E/CN.4/Sub.2/1999/13), the warring factions considered rape as a weapon. Measures were needed to ensure that such acts, which constituted serious violations of international human rights, did not go unpunished.

47. The adoption on 17 July 1999 of the Statute of the International Criminal Court was a move in the right direction, although the Court only had jurisdiction over crimes committed after the entry into force of the Statute. The International Criminal Tribunal for the Former Yugoslavia and the

International Criminal Tribunal for Rwanda were already tangible proof that the international community was making headway towards ensuring that international standards were respected.

48. Where the question of the "comfort women" was concerned, he regretted that a satisfactory solution to the problem had not yet been found.

49. Mr. OLOKA-ONYANGO said that traditionally the root causes of human rights violations could be explained by a host of historical, social, political, economic and cultural factors. Taking the case of Rwanda as an example, it had been known for decades that one of the primary sources of violations was the oppression of the Tutsi minority by the Hutu majority. The world should not have been surprised, therefore, by the 1994 explosion. In his opinion, the root causes for human rights violations in every context should be traced back to the smallest unit of society, namely, the family, in order to understand the violations which were manifested at the level of the State. In other words, the State was simply the family writ large, which provided some explanation for the sexual violence targeting women in so many conflicts throughout the world. That made it possible to understand that many human rights violations during armed conflict derived from the relations between men and women and age and sex discrimination within the family itself. The ideology of patriarchy - that men should lead and women must follow - was an often unacknowledged but extremely insidious root cause of human rights violations.

50. Turning to the issue of the "comfort women", it was painful to observe that the problem remained largely without solution, that no reparation had been made to the victims, and that the Japanese authorities had never officially acknowledged their liability. Even more painful was the fact that the United Nations was impotent to contribute to solving the problem.

51. Ms. DAES thanked and congratulated the Chairperson-Rapporteur, Ms. Warrazi, and all the other members of the Working Group on Contemporary Forms of Slavery whose report on its twenty-fourth session (E/CN.4/Sub.2/1999/17) was both extremely interesting and comprehensive. She paid tribute to the non-governmental organizations which had taken part in the work of the Working Group and played an important role in increasing public awareness, nationally and internationally, of the grave consequences of contemporary forms of slavery, particularly for women and children.

52. She drew attention once again to the existence of new contemporary forms of slavery and slavery-like practices, especially those to which illegal asylum-seekers were subject. Migrant workers were particularly affected, when they left their countries, often at the risk of their lives, to seek a better life abroad, and were mercilessly exploited by unscrupulous refugee smugglers or middlemen. It would be useful for the Working Group to be given specific data so that it could consider the problem in greater depth at its next session.

53. She welcomed Ms. McDougall's updated report on systematic rape, sexual slavery and slavery-like practices during armed conflict. "Under certain conditions rape was a crime against humanity and should be condemned and punished in accordance with international law. The International Criminal

Tribunal for the Former Yugoslavia and the International Criminal Tribunal for Rwanda had in some of their rulings considered sexual slavery and sexual violence during armed conflict to be international crimes. She hoped that the Sub-Commission would be able to give the report the attention it merited at its fifty-second session.

54. Ms. IULIA MOTOC, speaking on agenda items 5 and 6, said that it was a pity that few NGOs seemed to have any interest in the situation of women in Central and Eastern Europe. Their situation was generally mentioned in connection with the war in Bosnia or Kosovo where women had been the victims of sexual violence, in Ms. McDougall's report or in the context of traffic in persons for the purpose of prostitution, notably in the report of the Working Group on Contemporary Forms of Slavery. Those extreme situations gave a kind of radical feminist glimpse of women's place in Central and Eastern Europe.

55. She noted Ms. Warzazi's insistence in her report on traditional practices affecting the health of women and the girl child (E/CN.4/Sub.2/1999/14) on the need to establish a balance between calls for women's rights and tradition. It was a fact that a sudden transition from a patriarchal society to one which fully respected women's rights was not possible. An intermediate stage was required to eliminate all discrimination between men and women. In the countries of the European Union, positive action for women was fairly advanced; the basic principle of the Treaty of Amsterdam was non-discrimination between men and women. In Central and Eastern Europe, the protection of women's rights was retrogressing since equality between the sexes had often been imposed by force under a socialist regime and was therefore rejected. Some intellectuals even declared themselves to be antifeminist. The law stressed the role of women as mothers. There was therefore a need for the international community to take action to reinforce the protection of women in Central and Eastern Europe.

56. Ms. HAMPSON, speaking on agenda item 5, began by referring to the problem of incontinence often experienced by women who had undergone female circumcision and were abandoned by their husbands and the community as a result. A simple operation could solve the problem. Communities must therefore be persuaded not only to abandon the practice of female circumcision but to be more tolerant to women experiencing the after-effects and ensure that they had access to health care for that condition.

57. She agreed with all that had been said about means of combating the traffic in persons for the purpose of prostitution. She hoped that the Working Group on Contemporary Forms of Slavery would particularly address the problem of juvenile prostitution, often the result of poverty and marginalization.

58. With reference to the question of sexual slavery and slavery-like practices in times of war, she noted that the incidence of sexual aggression and rape was higher among the armed forces than in the male population as a whole, whether in times of peace or of war, at least in some States. It was clear, however, that rape was becoming a genuine weapon in armed conflict. All the measures to solve the problem already taken or envisaged by the special tribunals for the former Yugoslavia and Rwanda or the Statute of the

International Criminal Court were necessary but they were inadequate. It was means of preventing violations that had to be found, by adopting domestic legislation which prohibited and penalized rape by including it in the definition of torture, by putting resources into the training of persons who would be dealing with the victims of rape, and by applying special measures to protect the victims and the witnesses of such acts. Analagous provisions should be incorporated into codes of military justice and codes of military procedure and special training given to military investigators. States that had not yet done so should be encouraged to ratify the Protocols to the Geneva Conventions of 1949 and promulgate appropriate laws to ensure their effective implementation. The International Committee of the Red Cross would be able to provide appropriate advisory services.

59. What was needed above all was to reinforce the training and education not only of the members of the armed forces but of the entire population so as to inculcate respect for the human person, irrespective of sex, age, nationality, colour or ethnic origin. Such training programmes needed constant monitoring and, where necessary, revision to increase their efficacity if the statistics on sexual violence on the part of the armed forces did not show a decline. It was to be hoped that the Secretary-General, who was currently studying the question of the protection of civilians in situations of conflict, would consider putting in place, in cooperation with the International Committee of the Red Cross, a mechanism for monitoring not only the implementation of the Geneva Conventions through domestic legislation but also the effectiveness of the army training programmes. Any Government which had not taken the necessary measures would have demonstrated that it did not take seriously the problem of systematic rape, sexual slavery and slavery-like practices, thus exposing its armed forces to the risk of prosecution before the International Criminal Court or the courts of third States, and would have shown that it had not been capable of acting as it should.

60. In conclusion, she recalled that under the 1907 fourth Hague Convention concerning Laws and Customs of War on Land, which was part of customary law, States were responsible for all acts committed by persons forming part of their armed forces and were liable to pay compensation, if violations occurred. In her opinion that applied to the question of the "comfort women".

61. The CHAIRMAN declared that the general debate on agenda item 6 was closed.

HUMAN RIGHTS OF INDIGENOUS PEOPLES

(a) INDIGENOUS PEOPLES AND THEIR RELATIONSHIP TO LAND (agenda item 7) (E/CN.4/Sub.2/1999/18, 20 and 24; E/CN.4/Sub.2/1999/NGO/1 and 16; E/CN.4/Sub.2/AC.4/1999/7)

62. Ms. DAES (Chairperson-Rapporteur of the Working Group on Indigenous Populations), introducing her report on the seventeenth session of the Working Group on Indigenous Populations (E/CN.4/Sub.2/1999/19), which had been distributed in English only in an unedited version, began by thanking the other members of the Working Group and the secretariat whose devoted work had ensured the success of the seventeenth session. In particular, she was deeply grateful to the Chairman, Mr. Hatano, thanks to whose assistance her visit to

Japan, which had marked the start of close and sincere collaboration between the Government of Japan, the Ainu people and the Working Group, had produced fruitful results. In all, an unprecedented 971 persons - representatives of indigenous organizations, States, non-governmental organizations and United Nations specialized agencies, scholars, experts and human rights defenders - had taken part in the work of the Working Group. Its deliberations had taken place in a friendly atmosphere, permitting a constructive dialogue, even when controversial issues were discussed. On several occasions, the indigenous peoples had expressed their gratitude to the members of the Working Group and to the Sub-Commission as a whole for their sincere concern regarding their fate and regarding the recognition and protection of their rights in order to ensure their survival. In certain cases they had recognized that some Governments had already adopted measures to improve the living conditions of the indigenous peoples while others had continued their policy of oppression.

63. The discussions had followed the main theme of the seventeenth session, namely, "Indigenous peoples and their relationship to land", based on the second progress report on the subject (E/CN.4/Sub.2/1999/18) which she would present at a later stage. The Working Group had also considered the final report on the study of treaties, agreements and other constructive arrangements between States and indigenous populations (E/CN.4/Sub.2/1999/20), prepared by Mr. Alfonso Martinez, and had endorsed its conclusions and recommendations.

64. In its own conclusions and recommendations, contained in paragraphs 164 to 195 of the report on the seventeenth session, the Working Group had reaffirmed its view that the review of new developments was a fundamental part of its mandate. It had decided that the theme of its eighteenth session would be "Indigenous children and youth" and had recommended that the High Commissioner should consider the active participation of UNICEF and the Committee on the Rights of the Child at that session. Standard-setting activities being also a fundamental part of its mandate, the Working Group had decided to invite the Office of the High Commissioner for Human Rights to organize, in collaboration with ILO, UNCTAD and WTO, a workshop on indigenous peoples, the private sector, natural resources and energy and mining companies within the framework of human rights. The Working Group had also noted that a large number of participants had expressed their support for a permanent forum for indigenous peoples and had put forward relevant comments and suggestions. It had also recommended the organization of a world conference on indigenous issues to be held during the last year of the International Decade of the World's Indigenous People in 2004 in order to evaluate the results of the Decade and consider future international policies and programmes that would effectively contribute to the reconciliation of Governments with the indigenous peoples. It welcomed the organization of World Indigenous Nations Games and requested the High Commissioner for Human Rights to support the initiative. Lastly, following the repeated appeals by indigenous peoples, the Working Group had requested the appointment of a special rapporteur on indigenous issues in order to collect information from Governments, indigenous peoples and intergovernmental and non-governmental organizations concerning the promotion and protection of the human rights of indigenous peoples.

65. Ms. CECHUROVA (Radical Party Transnational and Transdivisional) said that Ms. Daes' final working paper on indigenous peoples and their relationship to land (E/CN.4/Sub.2/1999/18) was all the more useful in being submitted at the time of the mid-term review of the International Decade of the World's Indigenous People, one of the goals of which was to promote the land rights of indigenous peoples. In many countries, the unbridled development of the natural resources of land occupied by indigenous peoples had resulted in serious environmental pollution, which had had an adverse social impact on the indigenous people themselves.

66. The most serious case was that of the indigenous peoples of West Papua whose rights were constantly flouted as a result of copper and gold-mining operations by the Freeport McMoran company which provided an important source of income for the Indonesian regime. The local indigenous communities received only a tiny share - 5 billion dollars - of the fund set up by the Government after the National Commission on Human Rights found evidence of human rights violations, which was to have given about 45 billion dollars to the local population. They had not been informed about the fate of those billions of dollars. Similarly, the indigenous peoples had received no compensation for the destruction of the thousands of hectares of forest by the logging companies which operated without consulting them. The inhabitants of West Papua had become a disadvantaged minority on their own land as a result of the organized migration of people from heavily populated regions such as Java to less densely populated areas like West Papua, since the newcomers generally had a more advantageous position on the job market and in other areas of the economy and were subsidized by the Government.

67. Her Party therefore called on the Sub-Commission to urge all Governments to allow indigenous peoples to take responsibility for their own affairs and have an effective voice in decision-making in matters affecting them as suggested by the Commission in its resolution 1999/51. The Sub-Commission should also encourage a genuine dialogue between Governments and indigenous peoples, in general as well as in concrete cases like that of West Papua. Lastly, it called for the adoption of the Draft Declaration on the Rights of Indigenous Peoples as it stood.

The meeting rose at 5.55 p.m.